

AMENDED IN SENATE MAY 9, 2005  
AMENDED IN SENATE MARCH 17, 2005

**SENATE BILL**

**No. 163**

**Introduced by Senator Scott**

February 8, 2005

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An act to add Section 10295.2 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as amended, Scott. Public contracts.

Existing law establishes various requirements applicable to entities that want to contract with the state.

This bill would require a pharmaceutical company entering into a contract with an agency of the state to disclose the percentage of its national operating budget that is expended on marketing purposes, and the percentage of its national operating budget expended on research and development, *with specified exceptions*. The bill would prohibit a state department or agency from entering into a contract with a pharmaceutical company in the absence of that disclosure. *This bill would provide that specific information disclosed by a pharmaceutical company be held confidential and would make findings regarding the interest protected by keeping specific information confidential.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 10295.2 is added to the Public Contract
- 2 Code, to read:

1 10295.2. (a) A pharmaceutical company entering into a  
2 contract with a state department or agency shall disclose *to the*  
3 *Legislature and to the chief of the department or agency*  
4 *secretary*, the percentage of its national operating budget that is  
5 expended for marketing purposes, and the percentage of its  
6 national operating budget that is expended for research and  
7 development purposes. No state department or agency may enter  
8 into a contract with a pharmaceutical company in the absence of  
9 that disclosure. *This disclosure shall be made 30 days prior to*  
10 *the effective date of the contract and annually thereafter. The*  
11 *following marketing expenses are not subject to the requirements*  
12 *of this section:*

13 (1) *Expenses of twenty-five dollars (\$25) or less.*

14 (2) *Reasonable compensation and reimbursement for expenses*  
15 *in connection with a bona fide clinical trial of a new vaccine,*  
16 *therapy, or treatment.*

17 (3) *Scholarships and reimbursement of expenses for attending*  
18 *a significant educational, scientific, or policymaking conference*  
19 *or seminar of a national, regional, specialty medical, or other*  
20 *professional association if the recipient of the scholarship is*  
21 *chosen by the association sponsoring the conference or seminar.*

22 ~~(b) For the purposes of this section, “marketing” means~~  
23 ~~activities associated with advertising, marketing, and direct~~  
24 ~~promotion of prescription drugs through radio, television,~~  
25 ~~magazines, newspapers, direct mail, and telephone in connection~~  
26 ~~with detailing, promotional, or other activities performed by the~~  
27 ~~company directly, or through its pharmaceutical marketers.~~

28 (b) *For the purposes of this section, the following definitions*  
29 *apply:*

30 (1) *“Marketing” means activities associated with advertising,*  
31 *marketing, and direct promotion of prescription drugs through*  
32 *radio, television, magazines, newspapers, direct mail, and*  
33 *telephone in connection with detailing or promotional activities*  
34 *performed by the company directly, or through its*  
35 *pharmaceutical marketers.*

36 (2) *“Pharmaceutical company” means:*

37 (A) *An entity that is engaged in the production, preparation,*  
38 *propagation, compounding, conversion, or processing of*  
39 *dangerous drugs, either directly or indirectly, by extraction from*  
40 *substances of natural origin or independently by means of*

1 *chemical synthesis or by a combination of extraction and*  
2 *chemical synthesis.*

3 *(B) An entity engaged in the packaging, repackaging, labeling,*  
4 *relabeling, or distribution of dangerous drugs.*

5 *(C) A person who engages in pharmaceutical detailing,*  
6 *promotional activities, or other marketing of a dangerous drugs*  
7 *in this state on behalf of a pharmaceutical company.*

8 *(D) "Pharmaceutical company" does not include a licensed*  
9 *pharmacist.*

10 *(c) (1) Notwithstanding any other provision of law, any*  
11 *person required to present information to the Legislature and*  
12 *contracting department pursuant to this section may request that*  
13 *specific information be held in confidence. The Legislature and*  
14 *contracting department shall grant the request in any of the*  
15 *following circumstances:*

16 *(A) The information is exempt from disclosure under the*  
17 *California Public Records Act, Chapter 3.5 (commencing with*  
18 *Section 6250) of Division 7 of Title 1 of the Government Code.*

19 *(B) On the facts of the particular case, the public interest*  
20 *served by not disclosing the information clearly outweighs the*  
21 *public interest served by disclosure of the information. If it is*  
22 *determined that the disclosure of the information will result in an*  
23 *unfair competitive disadvantage to the person supplying the*  
24 *information, then the information shall not be disclosed.*

25 *(2) The contracting department may, by regulation, designate*  
26 *certain categories of information as confidential and thereby*  
27 *remove the obligation to request confidentiality for that*  
28 *information.*

29 *SEC. 2. The Legislature finds and declares that Section 1 of*  
30 *this act, which adds Section 10295.2 to the Public Contract*  
31 *Code, imposes a limitation on the public's right of access to the*  
32 *meetings of public bodies or the writings of public officials and*  
33 *agencies within the meaning of Section 3 of Article I of the*  
34 *California Constitution. Pursuant to that constitutional*  
35 *provision, the Legislature makes the following findings to*  
36 *demonstrate the interest protected by this limitation and the need*  
37 *for protecting that interest:*

38 *Information provided under Section 10295.2 may contain*  
39 *sensitive business information, the disclosure of which will result*

- 1 *in an unfair competitive disadvantage to the person supplying the*
- 2 *information.*

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